Annual Report

2005-2006

LETTER TO THE ATTORNEY GENERAL

BRITISH COLUMBIA

British Columbia Human Rights Tribunal

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July 31, 2006

Honourable Wally Oppal
Attorney General
Province of British Columbia
Room 232
Parliament Buildings
Victoria, BC V8V 1X4

Dear Attorney General:

It is my pleasure to present the third Annual Report from the BC Human Rights Tribunal, covering the period April 1, 2005, to March 31, 2006.

This report has been prepared in accordance with section 39.1 of the *Human Rights Code*.

Yours truly,

HMacNaughton.

Heather M. MacNaughton
Chair

HM/ll

Enclosure

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MESSSAGE FROM THE CHAIR

The Tribunal has completed its third successful year of operation under the direct access model. Our experience is being studied elsewhere in Canada.

TRIBUNAL WORKLOAD

The Tribunal continues to have a significant workload. Members released 567 interim decisions, 53 final decisions, and presided over 68 hearings and 346 mediations in the year. Approximately one-quarter of their workload involves settlement meetings.

1,131 new complaints were filed, which is consistent with the previous two fiscal years. Fewer than two dozen complaints remain out of those referred to the Tribunal by the former Human Rights Commission or transferred from it when it was closed in March 2003. Most of those cases are involved in the judicial review process at the Supreme Court and Court of Appeal levels or have been deferred pending the outcome of related cases there.

Member absences and illnesses in the year, together with significant member workloads, have slowed the average time in which preliminary and final decisions are being released. The Tribunal monitors this closely and its members are working diligently to release decisions promptly. To speed up the preliminary application process, some submissions and resulting decisions are being handled orally where appropriate.

To partially address these workload concerns, I appointed an additional Tribunal member for a six-month period under section 6 of the *Administrative Tribunals Act*.

With the cooperation of parties, the Tribunal is able to process a complaint, notify respondents, provide mediation, and schedule a hearing within six months of the complaint being filed.

POLICIES, PUBLICATIONS AND PROCESSES

Section 42(3) of the *Code* provides for the approval of special programs for the purpose of ameliorating conditions of disadvantaged individuals or groups. This year, the Tribunal has published its policy and a list of approved special programs on its website.

A media policy was developed and published on the Tribunal website.

In order to streamline the scheduling process, we have instituted teleconferences with the parties, conducted by the case manager, to arrange dates for mediations and hearings within weeks of a respondent filing its response to the complaint.

MEDIATION

The Tribunal's mediation services continue to be heavily used. The Tribunal provides mediation prior to the respondent filing a response to the complaint and at any other stage in the process. On a number of occasions, the parties have even requested mediation mid-hearing and successfully resolved the complaint. Each member is currently scheduled to assist parties in settlement meetings an average of six days a month. The Tribunal also has three experienced human rights mediators on contract to provide additional assistance.

This year, all of our staff who deal with parties directly received training in mediation skills. It is

often case managers who first identify the possibility of resolving all or part of a complaint through mediation. The training also assists them in diffusing issues between the parties without the need for member involvement.

The University of British Columbia delivered its preliminary report on the Tribunal's mediation processes, although they have not concluded their post-mediation interviews with participating parties. Professors William Black and Philip Bryden concluded that the Tribunal's processes are generally effective and fair, finding that both settlement rates and the satisfaction of the parties with the process are relatively high. The terms of settlement were found to be in line with awards received after a full hearing.

In the course of mediations, the Tribunal has effected systemic change. Some examples include:

- In a corporate setting, implementation of discrimination and harassment policies;
- In a college setting, implementation of a formal system for assessing students with learning disabilities to facilitate the provision of services to them;
- In a public school setting, an agreement to consult parents of disabled children about specific learning needs when recruiting special education aides;
- In a corporate setting, the introduction of recruitment initiatives at local high schools, community colleges and universities, to attract female candidates for non-traditional female jobs;
- In a housing setting, an agreement to install alarm devices in all common areas to assist the hearing impaired;
- In a corporate setting, an agreement to provide employee training on a new human rights policy, focusing on the areas of race and disability;
- In a service provider setting, an agreement to provide specialized training for front-line staff on dealing with mentally disabled applicants; and
- In a corporate setting, an agreement to review recruitment scoring practices with a consultant to determine whether minority candidates are disadvantaged in job competitions.

JUDICIAL REVIEWS

Once again, the number of judicial reviews increased significantly this year and many of them dealt with interim, procedural decisions. The number filed exceeded the capacity of our in house legal counsel to deal with them and outside counsel were retained on several occasions.

Through this litigation, the standard of review applicable to preliminary decisions of the Tribunal is gradually being clarified. It remains to be seen whether this will reduce the number of applications.

Of significant importance with respect to the standard of review of the Tribunal's work was *Berezoutskaia* v. *British Columbia (Human Rights Tribunal)*, 2006 BCCA 95. The B.C. Court of Appeal confirmed that with the elimina-

tion of the former Human Rights Commission in 2003, the Tribunal assumed a gate keeping role in evaluating a complaint during the screening process. This involves only a preliminary assessment of the evidence submitted in order to determine whether the complaint warrants going forward to the hearing stage. The applicable standard of review for this exercise of discretion is patent unreasonableness pursuant to section 59(3) of the *Administrative Tribunals Act*. The Court confirmed a decision of the B.C. Supreme Court that an evaluation at this stage of the process attracts the highest degree of curial deference, as it involves the assessment of evidence in a specialized area of the law.

The Coming Year

Literacy Audit Project

The Canadian Council of Administrative Tribunals (CCAT) is a national organization dedicated to enhancing administrative justice in Canada. CCAT has received a federal government grant to develop a training manual and staff training sessions for tribunals in order to make them more accessible to Canadians with literacy challenges.

Through my involvement as a B.C. representative on the CCAT Board and a member of the National Literacy Committee, I have agreed to the participation of the B.C. Human Rights Tribunal in an audit of our processes, website and forms and the subsequent training of all of our staff, as part of this national initiative to increase accessibility. The review has begun and will be completed in this fiscal year.

Decision Release Timeframes

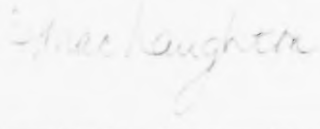
The Tribunal will continue to seek ways to improve its decision release timeframes.

Revisiting the Definition of "Age"

In recognition of the changing demographics facing British Columbia, the Premier's Council on Aging and Seniors' issues is looking at the services and changes needed to adapt to the changes in the age composition of our population, with a final report being submitted in November 2006. Changes to the definition of "age" in the *Code* may result.

Conclusion

As Chair of the Tribunal, I am privileged to work with a team of dedicated and hard-working professionals. The success of our operation is to their credit.



Heather M. MacNaughton
Chair

COST OF OPERATION

BC Human Rights Tribunal Operating Cost
Fiscal Year 2005-2006

Category	Expenditure
Salaries (Chair, Members, Registry and Administration)	$ 1,878,638
Employee Benefits	$ 440,968
Retired Members – Fees for Completing Outstanding Decisions	$ 4,730
Travel	$ 63,511
Centralized Management Support Services	$ 706
Professional Services	$ 69,867
Information Services, Data and Communication Services	$ 16,123
Office and Business Expenses	$ 77,307
Statutory Advertising and Publications	$ 11,458
Amortization Expenses	$ 45,520
Building Occupancy	$ 453,962
Total Cost	**$ 3,062,790**

What's New?

Oral Submissions

During the past year, the Tribunal has allowed oral submissions on some preliminary applications in order to speed up the process. These include applications for orders for adjournment, disclosure, particulars, extensions of time and applications brought on short notice prior to a scheduled hearing. Other types of applications are considered on a written request to the Registrar. Oral decisions are given in most of these cases.

Tribunal Web Site

The format of reporting decisions on the Tribunal Web site has been changed for the convenience of the parties and the general public. The links to decisions on preliminary applications appear in blue and those to final decisions appear in red. The grounds and areas of discrimination are noted in parentheses beneath the link for final decisions.

Due to the volume of decisions rendered by the Tribunal, in the next fiscal year the decisions will be grouped in the quarter of the year in which they were released.

Complaints of Retaliation

The screening process has been altered with respect to complaints based on retaliation or where a party who is alleged to have been discriminated against has died. In January 2006, the B.C. Supreme Court determined that retaliation pursuant to section 43 of the *Code* could only arise after a complaint has been filed with the Tribunal. (*Cariboo Chevrolet Pontiac Buick GMC Ltd.* v. *Becker*, 2006 BCSC 43) The B. C. Court of Appeal confirmed that a complaint can not continue after the death of the party who is alleged to have been discriminated against. (*British Columbia* v. *Gregoire*, 2005 BCCA 585)

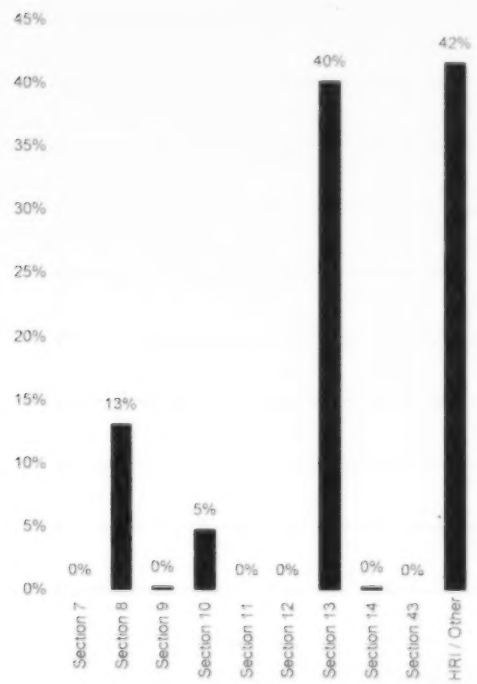
INQUIRY STATISTICS

General inquiries about the Tribunal process are answered by two Inquiry Officers. The Inquiry Officers also provide basic information about the *Code* protections and refer callers to appropriate resources. They answered 15,434 inquiries this year, averaging 65 calls daily.

The highest percentage of inquiries, 40%, related to employment (sections 13 and 14 of the *Code*). Inquiries relating to services (section 8), represented 13% of the inquiries and those relating to tenancy (section 10) represented 5% of the total.

A toll-free number enables callers throughout the province to access the Inquiry Officers. The geographic origin of inquiries indicates that 16% originated from Vancouver, 37% from the Lower Mainland, 8% from Victoria, and 28% from elsewhere in the province.

Summary of Complaint Inquiries



Geographic Origin of Inquiries

LEGEND

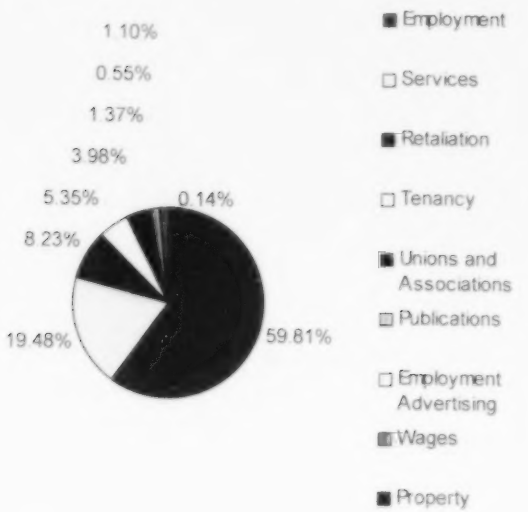
VA ..... VANCOUVER
VI ..... VICTORIA
A ..... LOWER MAINLAND (EXCLUDING VANCOUVER)
B ..... VANCOUVER ISLAND & GULF ISLANDS (EXCLUDING VICTORIA)
C ..... OKANAGAN
D ..... ROCKY MOUNTAINS
E ..... SQUAMISH / KAMLOOPS
F ..... KOOTENAYS
G ..... SUNSHINE COAST
H ..... CARIBOO
I ..... PRINCE GEORGE AREA
J ..... SKEENA
K ..... NORTHERN BC
OP ..... OUT OF PROVINCE

COMPLAINT STATISTICS

There were 1,131 new complaints filed at the Tribunal, of which 350 were screened out at the initial screening stage.

The *Code* prohibits discrimination in the areas of employment, employment advertisements, wages, services, tenancy, purchase of property, publication and membership in unions and associations. It also forbids retaliation against a person who makes a complaint.

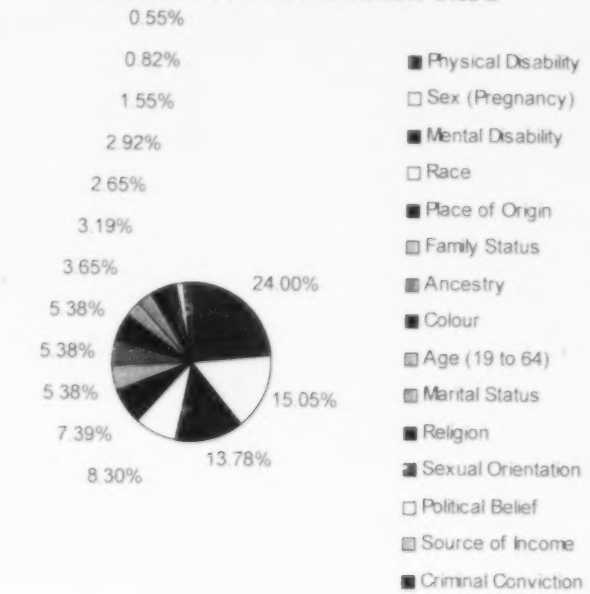
Areas of Discrimination Cited



There are 15 prohibited grounds of discrimination: age (19 to 64), ancestry, colour, family status, lawful source of income, marital status, place of origin, physical and mental disability, political belief, race, religion, sex, sexual orientation and unrelated criminal conviction. As a result of decisions of this Tribunal and others, the ground of sex has been found to include pregnancy. Not all grounds apply to all areas. Some complainants cite more than one area and ground of discrimination. For instance a complainant with a race-based complaint may also select grounds of ancestry, colour and place of origin.

The area of employment was cited most frequently (60%), followed by services (19%), tenancy (5%), publications (5%), and unions and associations (4%). The most common ground cited was physical disabiity (24%), followed by sex (15%), mental disability (14%), race (8%), and place of origin (7%). Family status, ancestry, and colour each were 5%. Retaliation was cited in 8% of complaints.

Grounds of Discrimination Cited

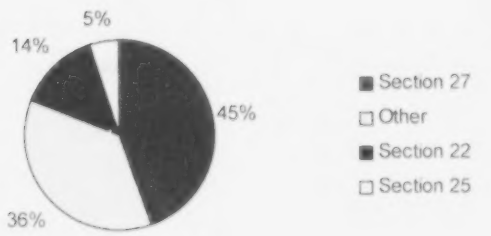


The Tribunal closed 1,220 cases this year. Cases are closed when they are not accepted, withdrawn, abandoned, settled, dismissed or a decision is rendered after a hearing.

PRELIMINARY DECISIONS

Much of the Tribunal members' work continued to involve preliminary applications. Of 620 decisions rendered, 567 were on preliminary matters (91%). They included applications to accept a complaint filed after the six-month time period, to dismiss a complaint under section 27 of the *Code*, to defer a complaint under section 25 of the *Code* and applications with respect to other procedural matters.

Preliminary Applications Decided



APPLICATIONS TO ACCEPT A COMPLAINT FILED AFTER THE SIX-MONTH TIME LIMIT

Section 22 of the *Code* requires complainants to file a complaint within six months of the alleged discrimination. The Tribunal has discretion to accept complaints that are filed after the time limit if it is in the public interest to do so and no substantial prejudice will result to any person.

Of the 92 time limit applications decided this year, 39 complaints were accepted in whole or in part, and 53 were not. The Tribunal accepted late-filed complaints for the following reasons:

In a complaint of sexual harassment, the Tribunal accepted that the complainant was not mentally or emotionally able to express herself for a period of time because the incidents gave rise to feelings associated with previous abuse. (*Apedaile* v. *Walker*, 2006 BCHRT 165)

In a complaint that the physical testing component of a pre-apprenticeship program discriminated against women, the complainant filed her complaint four months out of time, explaining she suffered from a workplace injury, was unable to make personal phone calls from work, had responsibilities as a single mother, and had attempted to resolve the matter internally through her union. These factors, and the fact that the program was ongoing, favoured the exercise of the Tribunal's discretion and acceptance of the complaint. (*Riceman* v. *B.C. Hydro and others*, 2005 BCHRT 475)

In a complaint of termination of employment due to pregnancy, the complainant justified a four day delay in filing due to stress and the post birth transition period, where the respondent did not provide reasons why it would be substantially prejudiced. (*Knight* v. *Talk to Dino Real Estate*, 2006 BCHRT 140)

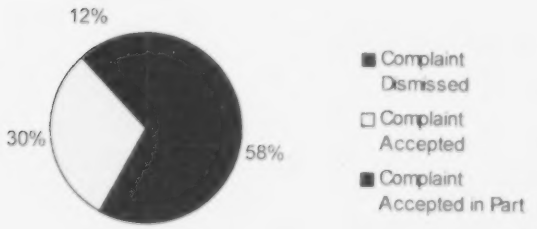
The Tribunal rejected late-filed complaints for the following reasons:

In a complaint of sexual harassment, a complainant argued that she and her husband, who worked for the same employer, had to find other work before filing the complaint as they could not afford to be unemployed. The Tribunal found that this did not explain the delay of over three months in filing after she left her job nor did the complaint raise unique issues such that it was in the public interest to accept it. (*Lhotak* v. *Easy Care Restorations and Riggs*, 2006 BCHRT 174)

PRELIMINARY DECISIONS

A complaint was filed at the Tribunal 16 days after the six-month time limit. The complainant alleged it had been faxed two months earlier and she had redated and refiled the same complaint with a new last page when told that there was no record of its receipt. Because the form had been revised by the Tribunal in the interim, the complainant was not found credible, and accepting the complaint for late filing would undermine the integrity of the process. (*Singer* v. *Pacific Language Institute and Inman*, 2006 BCHRT 138)

Section 22 Applications Decided



APPLICATIONS TO DEFER A COMPLAINT

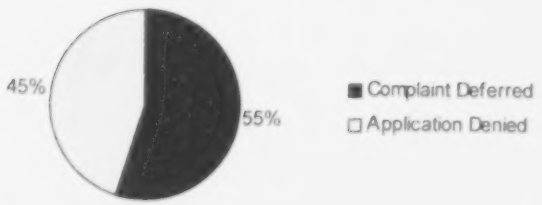
Under section 25 of the *Code*, the Tribunal may defer consideration of a complaint until the conclusion of another proceeding capable of appropriately dealing with its substance.

Of 32 applications to defer, 17 were granted, including three by consent. Most other proceedings involved labour grievances, but they included civil actions, commercial arbitrations, and an internal investigation under a collective agreement.

The Tribunal granted a deferral in a complaint of discrimination in employment because of a physical disability, pending the outcome of a grievance proceeding, on the condition that an arbitrator was selected and arbitration dates were set prior to a certain date. (*Ellis* v. *Simon Fraser University*, 2005 BCHRT 153)

By contrast, the Tribunal declined to defer a complaint of discrimination in employment pending a wrongful dismissal action in court as it was not capable of appropriately dealing with the substance of the complaint. (*Trevitt* v. *Blanche Equipment Rentals*, 2005 BCHRT 236)

Section 25 Applications Decided



APPLICATIONS TO DISMISS A COMPLAINT

The Tribunal may dismiss all or part of a complaint for the reasons in the subsections of section 27(1). Most applications to dismiss under this section are filed under more than one subsection.

Applications to dismiss under section 27(1) comprised just under half of the preliminary applications filed. Respondents filed 287 applications to dismiss: 141 complaints were dismissed in whole and an additional 39 complaints were dismissed in part. 107 applications to dismiss were denied.

Preliminary Decisions

Section 27(1)(a): Jurisdiction

As a provincial administrative body, the Tribunal does not have jurisdiction over federally-regulated undertakings.

In a complaint of discrimination in employment, the Tribunal decided it did not have jurisdiction as the respondent was an Indian Band as defined by the federal *Indian Act*. (*Edwards* v. *Lake Babine Nation and others*, 2005 BCHRT 215)

The Tribunal dismissed a complaint by a hearing-impaired employee of the Speaker of the Legislature as not within its jurisdiction due to parliamentary privilege. (*Scott* v. *B.C. (Office of the Speaker of the Legislative Assembly) and Larsen*, 2005 BCHRT 550)

The Tribunal accepted jurisdiction over a complaint against Pacific Coach Lines in regard to wheelchair accessible bus service because the bus services were provided exclusively within the province of B.C. (*Coughlin* v. *Pacific Coach Lines*, 2006 BCHRT 160)

Section 27(1)(b): No Contravention of the Code

In a complaint of discrimination in employment on the ground of disability against both a company and its general manager, the respondents applied to have the complaint against the general manager dismissed. The company argued that she acted within the scope of her duties at all times, and did nothing personally that would amount to a contravention of the *Code*. The Tribunal held that the manner in which an individual manager responds to redress a discriminatory situation may attract individual liability, and that the issue of whether this particular general manager caused or contributed to an infringement of the complainant's rights was in issue. The application was denied. (*Vetro* v. *Klassen and Pacific Transit Cooperative (No. 2)*, 2005 BCHRT 263)

Section 27(1)(c): No Reasonable Prospect of Success

The Tribunal dismissed a complaint against a pharmacist who refused to sell needles to a licensed esthetician. The complainant claimed that the pharmacist believed her to be a drug user, and discriminated against her on the basis of a perceived physical or mental disability. The Tribunal ruled that for the respondent to ask what was to be injected, and comment on possible infection concerns, could not reasonably be perceived as discrimination. (*Zolkiewicz* v. *Shoppers Drug Mart (No. 2)*, 2005 BCHRT 373)

The Tribunal dismissed a complaint on the ground of sexual orientation against a physician at a medical clinic. So long as a doctor exercises medical judgment in a non-discriminatory manner, the question of standard of care is not an issue for the Tribunal. (*Stutz* v. *Kiai*, 2005 BCHRT 376)

The Tribunal did not dismiss a complaint under section 27(1)(c) where racial discrimination was alleged as a factor in the termination of employment. Where there were no allegations of blatant discrimination and the complainant would have to convince the Tribunal that discrimination could be inferred from the Respondent's behaviour, it could not conclude that the complaint had no reasonable prospect of success. (*Wu* v. *Morningstar*, 2005 BCHRT 326)

PRELIMINARY DECISIONS

SECTION 27(1)(d): PROCEEDING WOULD NOT BENEFIT THE PERSON, GROUP OR CLASS DISCRIMINATED AGAINST OR WOULD NOT FURTHER THE PURPOSES OF THE CODE

In a complaint that a police department denied a complainant service because of his race, the Tribunal denied an application to dismiss under section 27(1)(d)(ii) because the parties had not entered into a final and binding settlement. There was no basis to conclude that proceeding would not further the purposes of the *Code*. (*Zhang* v. *Victoria Police Department*, 2005 BCHRT 324)

SECTION 27(1)(e): COMPLAINT MADE IN BAD FAITH OR IMPROPER MOTIVES

In a complaint of discrimination in tenancy by a single mother, the respondents claimed that the complaint was filed in response to a notice to vacate, and therefore filed for an improper purpose or in bad faith. The Tribunal could not find improper purpose or bad faith based on the information before it. (*Foye and Foye* v. *Desroches and S & D Maintenance*, 2005 BCHRT 268)

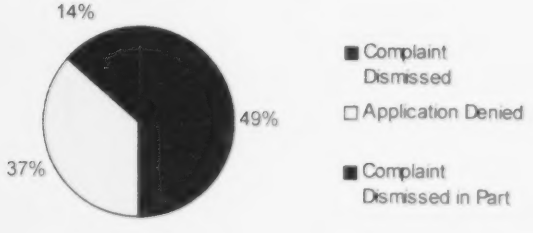
SECTION 27(1)(f): COMPLAINT APPROPRIATELY DEALT WITH IN ANOTHER PROCEEDING

In a complaint where an injured worker also made a WCB claim, the Tribunal decided that the WCB proceeding was limited to whether there was a compensable workplace injury, and did not deal with the issues to be determined in her human rights complaint. The application was denied. (*Eastman* v. *Cornerstone Couriers*, 2005 BCHRT 164)

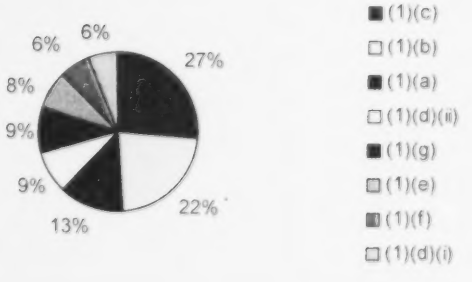
SECTION 27(1)(g): ALLEGED CONTRAVENTION OUTSIDE THE TIME LIMIT

In a complaint of discrimination in employment and retaliation, some events pre-dated the six-month time limit. The Tribunal found that there was a continuing contravention, and the last incident was within six months. Retaliatory acts outside the scope of the employment brought the complaint within the time limit. (*Verslype* v. *Onyx Industrial Services and Crowe (No. 2)*, 2005 BCHRT 152)

Section 27 Applications Decided



Sub-Sections of Section 27 Relied On



PRELIMINARY DECISIONS

SECTION 27.5: FAILURE TO DILIGENTLY PURSUE COMPLAINT

In a complaint of discrimination in tenancy on the grounds of mental disability and source of income, the Tribunal considered that the complainant's mental condition might be contributing to his failure to diligently pursue his complaint and provided him an opportunity to comply with the Rules and procedures in a timely fashion. (*Rogozin* v. *Benryk Mews Housing Co-operative*, 2005 BCHRT 389)

OTHER APPLICATIONS

The 234 other preliminary applications addressed issues of disclosure, adjournment, will-say statements, intervenors, adding or substituting parties, and failure to pursue.

Examples include:

DISCLOSURE

In a complaint of discrimination in employment on the ground of disability, the respondents applied for disclosure and costs for the complainant's refusal or failure to disclose documents relating to business and employment income during a medical leave. The Tribunal found that the documents were not relevant and therefore not disclosable but awarded costs against the complainant for failing to comply with Tribunal Rules, resulting in inefficiency and a waste of the resources of the Tribunal and the parties. (*Jacobs* v. *Dynamic Equipment Rentals Ltd. and Stewart (No. 2)*, 2005 BCHRT 353)

PRE-HEARING EXAMINATION, PRODUCTION OF DOCUMENTS AND REQUEST FOR AN INDEPENDENT MEDICAL EXAMINATION

In a representative complaint by a mother, on behalf of her daughter, challenging a government policy prohibiting people with disabilities from using government funding to hire family members as caregivers, the Tribunal ordered production of documents including medical and counselling records of the child but denied a pre-hearing examination of the mother and an independent medical examination of the child. (*Hakansson* v. *B.C. (Ministry for Children and Family Development) (No. 2)*, 2005 BCHRT 217)

JURISDICTION

The Tribunal sought submissions with respect to jurisdiction where a complainant alleged a native corporation refused to hire her because of her family status and political beliefs. The Tribunal found that the Respondent carried out typical business activities and was within provincial jurisdiction. (*Stephens* v. *Gitxat'in Development Corp. and others*, 2005 BCHRT 393)

ADD OR SUBSTITUTE A PARTY

In a complaint of discrimination in employment on the basis of pregnancy, the sole director and owner of the company was added as a respondent after the company declared bankruptcy, as the Tribunal accepted that any remedy ordered would otherwise be unenforceable. (*Dance* v. *ANZA Travel Ltd. (No. 2)*, 2005 BCHRT 358)

In a complaint where the representative complainant was the former Executive Director of a society, the current Executive Director was substituted as an appropriate representative on the society's application. (*Koehler* v. *Carson and others*, 2006 BCHRT 50)

Preliminary Decisions

Venue Change

In a complaint where a married couple claimed discrimination in employment because of marital status and physical disability, the hearing venue was changed as one complainant was unable to attend a Vancouver hearing for medical reasons, and the other complainant was her primary caregiver, and unable to leave her unattended. The balance of convenience and necessity favoured a change of venue. (*McKay and McKay* v. *Campagnolo Holdings Ltd. (No. 2)*, 2005 BCHRT 244)

Joinder

Two separate complaints filed against the respondents by an inmate were joined. The reduction in time and expense, and the efficient use of Tribunal resources resulted in the joinder of complaints of discrimination and retaliation. (*Vorley* v. *B.C. (Ministry of Solicitor General)*, 2005 BCHRT 219)

Limit Publication

In a complaint of sexual harassment, a respondent, alleged to have sexually harassed the complainant, sought to limit publication of his name. The parties either consented or did not object to the order and a settlement agreement was contingent on the order being made. The Tribunal deemed the order would facilitate the just and timely resolution of the complaint and further the public interest in a consensual resolution of complaints. (*Larssen* v. *City of Port Coquitlam and others*, 2005 BCHRT 414)

Re-Open Complaint

The complainant was successful in an application to re-open her complaint after it had been dismissed pursuant to section 27.5 of the *Code* after she did not reply to Tribunal correspondence. The Tribunal considered its policy on a complainant's duty to communicate, as well as its policy of attempting to locate a complainant before dismissal. (*Deol* v. *Stewart and Specialty Building Products*, 2005 BCHRT 210)

Adjournment

The Tribunal granted an adjournment of a hearing so that the complainant could obtain representation from the Human Rights Clinic. The Clinic was unable to attend on the scheduled date, the application was made three months before the date, the number of witnesses to be called would exceed the time allotted and the respondents would not be unduly prejudiced by a five month adjournment. (*Schmidt* v. *G & R Contracting Ltd. and others*, 2005 BCHRT 362)

Decisions in Other Applications

FINAL DECISIONS

This year the Tribunal rendered 53 final decisions. After a hearing, 21 (40%) of the complaints were found to be justified and 32 (60%) were dismissed. The complaints were in the areas of publication, services, purchase of property, tenancy, employment, membership in a union and retaliation. Some complaints alleged discrimination in more than one area. Many complaints alleged discrimination on more than one ground.

The greatest number of decisions continues to be in the area of employment (70%), with 37 complaints heard and 13 found to be justified. The area of services represented 21% of the hearings, with 11 heard and five found to be justified. The area of tenancy represented 9% of the hearings, with five heard and three found to be justified. Two complaints were with respect to membership in a union. One complaint was in respect to publication, and one of purchase of property. Four complaints of retaliation were heard.

GROUNDS OF DISCRIMINATION

SEX

An employer discriminated against a hair stylist on the basis of her pregnancy when her condition was not accommodated. She left her employment for maternity leave earlier than planned and a poisoned work environment precluded her return to the job. (*Crocket* v. *Goodman and Eclipps Hair Cafe*, 2005 BCHRT 471)

A complaint by a former employee alleging discrimination on the ground of sex was dismissed. The complainant stated that allegations of impropriety had been made, during public meetings, about her relationship with an official. The Tribunal found that the comments were equally damaging to the reputations of both persons and did not have an effect on her employment status. (*Bouillet* v. *Dorsey*, 2005 BCHRT 357)

A complainant applied for a front office position in a family-run business. The respondent company actively considered hiring her but discriminated in not hiring her when she disclosed her pregnancy. (*Dorvault* v. *Ital Décor and Tinucci*, 2005 BCHRT 148)

SEX AND AGE

The Tribunal dismissed a complaint of discrimination in employment on the grounds of sex and age. The complainant's evidence was not credible and did not establish a *prima facie* case of discrimination. (*Madge* v. *Trca and Strategic Defence*, 2005 BCHRT 392)

SEXUAL HARASSMENT

The Tribunal dismissed a complaint of sexual harassment in employment and retaliation for filing a human rights complaint. The Tribunal found that the behaviour complained of was not of a sexual nature and not objectively unwelcome. The work environment was not detrimentally affected, and there were no adverse employment-related consequences. (*De Leon* v. *Tridim 2 Millwork*, 2006 BCHRT 6)

SEXUAL ORIENTATION

The Tribunal found that the complainant's sexual orientation was a factor in the board of a co-operative denying him the opportunity to purchase a unit in the complex. He was awarded compensation for injury to dignity, feelings and self-respect but denied costs. (*Outingdyke* v.

Irving Apartments and others, 2005 BCHRT 443)

A same-sex couple rented a hall operated by a Catholic men's organization and owned by the church. The rental was cancelled when the respondents learned that a same-sex marriage reception was to be held. The respondents were entitled to hold their core religious beliefs and act on them, however, in doing so, they had to respect the rights of the complainants to have access to a public space to celebrate their marriage. It found that the respondents could have accommodated the couple. The Tribunal also determined that the respondents could not grant preferential treatment in renting the hall to members of their own religious group pursuant to section 41 of the *Code*. (*Smith and Chymyshyn* v. *Knights of Columbus and others*, 2005 BCHRT 544)

DISABILITY (EMPLOYMENT)

A seriously ill employee of 28 years, on long term disability benefits, was terminated by his employer for non-culpable absenteeism shortly before the company concluded a voluntary severance agreement with the union. He was found to have suffered discrimination based on his physical disability when he was thereby denied a substantial severance payment after the mill closed. The Tribunal was not bound by a previous arbitration award which rejected the union's grievance on behalf of other employees terminated before the complainant. (*MacRae* v. *Interfor (No. 2)*, 2005 BCHRT 402)

The Tribunal decided that the respondent discriminated against an employee with a physical disability when he was not recalled to work before other non-disabled employees who were not better qualified. (*Cardamone* v. *Crown West Steel Fabricators and Hewthorst (No. 2)*, 2005 BCHRT 369)

A complaint of discrimination based on physical disability in employment succeeded when an employee was dismissed because he was absent due to illness. The Tribunal found that the employer had not accommodated him to the point of undue hardship. (*Innes* v. *Re-Con Building Products*, 2006 BCHRT 99)

The Tribunal dismissed a complaint of discrimination in employment on the grounds of disability and sex where a complainant failed to appear at a hearing where the complainant had received deemed and actual notice of the hearing date. (*Haydu* v. *Hudson's Bay Company*, 2006 BCHRT 77)

DISABILITY (SERVICES / TENANCY)

The parents of a dyslexic student brought a representative complaint against school board trustees and the Ministry of Education alleging individual and systemic discrimination on the basis of mental disability. The respondents were found jointly and severally liable for failing to identify his disability soon enough and to provide him with supports needed to allow access to available educational services. They had also systematically discriminated against children with severe learning disabilities in relation to the level of services provided, the inadequacy of available methods of remediation, the Ministry's role in monitoring the delivery of special education services and the provision of funding levels for such students throughout British Columbia. The respondents were ordered to reimburse the complainant for remedial educational costs and an award of $10,000 was made to compensate the student for the injury to his dignity, feelings and self-respect.

Additionally, they were ordered to implement systemic remedies within one year to resolve the noted inequities. (*Moore* v. *B.C. (Ministry of Education) and School District No. 44*, 2005 BCHRT 580)

A landlord's failure to install handrails needed by a physically-disabled tenant was a failure to accommodate, constituting discrimination. (*Ferguson* v. *Kimpton*, 2006 BCHRT 62)

Family Status and Source of Income

A couple with a child were told families could only rent apartments with more than one bedroom. While a maximum occupancy policy, applied without distinction to all applicants without regard to their family status, might be justifiable in certain circumstances, the denial of the opportunity to rent a one bedroom apartment on the basis of family status was found to be discriminatory. (*Cha and Cha* v. *Hollyburn Estates Ltd. (No. 2)*, 2005 BCHRT 408)

In a complaint against a landlord and property manager, the complainant alleged that she was subjected to unfair and differential treatment and evicted because she is a single parent and on income assistance. The Tribunal dismissed the complaint, finding no evidence to support that she was treated differently for the reasons alleged. (*Foye* v. *Desroches*, 2005 BCHRT 372)

Race

The Tribunal decided that a taxi company and driver discriminated against Aboriginal complainants by the use of discriminatory language and by requesting pre-payment of the fare. (*Holland and Jack* v. *Prince George Taxi and Kuuluvainen*, 2005 BCHRT 317)

The complainant replied to a newspaper advertisement for an executive director of the "UNN". His application was not processed as he was not of Aboriginal ancestry. In accordance with section 41 of the *Code*, as a charitable, non-profit organization having as its primary purpose the promotion of the interests and welfare of Aboriginal people, the society did not contravene the *Code* by granting a preference to Aboriginals in the hiring process. The Tribunal noted that the issue might not have arisen had the society specified the preference in the advertisement. They might also have applied pursuant to section 42 for approval of a "special program" to allow hiring of members of a specific group. (*Gillis* v. *United Native Nations Society*, 2005 BCHRT 301)

Race (Systemic)

Where an Aboriginal complainant was stereotyped and mistreated in a shopping mall, the Tribunal found discrimination on the basis of race, colour, ancestry and disability but also found a pattern of systemic discrimination against Aboriginals and some disabled people by the owners and security staff. In this case, the Tribunal highlighted the concept of compound discrimination, which is the interrelationship between a number of intersecting grounds of discrimination. (*Radek* v. *Henderson Development (Canada) Ltd. and Securiguard Services (No. 3)*, 2005 BCHRT 302)

Religion (Publication)

A complaint of discrimination on the ground of religion was filed against the publisher of a magazine where a cover picture of Shiva, a sacred symbol of the Hindu religion, was characterized for the purpose of a series on consumerism. The Tribunal dismissed the com-

plaint when it found no evidence that the publication had or was intended to have a discriminatory effect. It did not express hatred or contempt, nor did it expose members of the Hindu religion to that. (*Khanna* v. *Common Ground Publishing*, 2005 BCHRT 398)

AGE

In a complaint of discrimination in employment, the complainant alleged that his employer denied him promotion opportunities because of his age and the Tribunal found that age had been a factor in denying him a promotion for certain positions. (*Tate* v. *West Telemarketing*, 2005 BCHRT 530)

NO EVIDENCE

A tenant wanted the landlord to permit him to keep pet dogs as an accommodation of his disability. The Tribunal allowed a motion of no evidence, finding that the complainant had not established a reasonable basis on which a favourable conclusion could be reached. (*Strumecki* v. *Capital Regional Housing Corp. (No. 2)*, 2005 BCHRT 386)

The Tribunal dismissed a complaint on a no evidence motion in a complaint of discrimination in employment on the grounds of race and place of origin. While acknowledging that racial discrimination is rarely overt and likely even more subtle in today's society, the Tribunal noted that there still must be some evidence from which discrimination can be inferred. (*Mezghrani* v. *Canada Youth Orange Network (CYONI) (No. 2)*, 2006 BCHRT 60)

JUDICIAL REVIEWS AND APPEALS

The Tribunal is subject to the supervision of the superior courts in respect of its decision-making. There is no right to appeal but a party who believes that the Tribunal erred may seek judicial review in the B.C. Supreme Court pursuant to the *Judicial Review Procedure Act*.

There is a 60-day time limit for judicial review in section 57 of the *Administrative Tribunals Act*. Section 59 specifies the standards of review applicable to Tribunal decisions.

A Supreme Court judicial review decision may be appealed to the B.C. Court of Appeal within 30 days. A further appeal may be made to the Supreme Court of Canada with leave of that Court.

JUDICIAL REVIEWS IN THE SUPREME COURT

This year there were 22 petitions for judicial review, which is a significant increase from the thirteen filed last year. Seven of this year's applications related to Tribunal final decisions and 15 were of preliminary decisions. A number considered the application of statutory standards of review and the issue of whether section 59 operates retrospectively. The Tribunal was represented on all but one of the judicial reviews. Fifteen B.C. Supreme Court decisions on judicial review were rendered. In addition, there were two applications to Supreme Court for leave to late-file petitions for judicial review. One was granted and one was not.

The Court affirmed a Tribunal decision allowing an amendment after the expiry of the time limit for filing a complaint. The Court characterized screening decisions as discretionary and stated

the Tribunal could decide where in the process the complaint was when it was amended. (*Lake City Casinos Ltd.* v. *British Columbia (Human Rights Tribunal) et al.*, 2006 BCSC 88)

The Court held that a decision by the Tribunal to reject a complaint at the screening stage is a discretionary decision subject to review on a standard of patent unreasonableness under section 59 of the *Administrative Tribunals Act*. The Court also decided that even if the Tribunal erred, damages are not available on an application for judicial review. (*Shilander* v. *B.C. Human Rights Tribunal*, 2005 BCSC 728)

In an oral judgement, the Court dismissed an application for judicial review of a preliminary ruling by the Tribunal in regard to the admissibility of communications between counsel for the parties, because it was premature. The Tribunal's ruling should not be challenged until the proceedings are complete. (*Fire-Trol Canada Company* v. *Bradley and British Columbia Human Rights Tribunal*, 2005 BCSC 1646)

The Tribunal denied an application to dismiss a complaint as being filed out of time. The Court held that the Tribunal should not have relied on documentation created by the former Commission and its understanding of the Commission's practices and documentation without giving the respondents an opportunity to challenge them before determining their admissibility and weight. (*Imperial Parking* v. *Bali et al.*, 2005 BCSC 643)

The Court held that the approval of criminal charges by Crown Counsel is not a service customarily available to the public under section 8 of the *Code*; therefore, the Tribunal did not have jurisdiction and could not defer determination of this legal question to the hearing. The Court's decision is under appeal. (*HMTQ* v. *Crockford*, 2005 BCSC 663)

The Court noted that the Tribunal's ability to make rulings respecting pre-hearing production of documents is a vital component of its role. An application for judicial review of an order for disclosure of documents was premature. (*Brady* v. *B.C. Human Rights Tribunal et al.*, 2005 BCSC 1403)

Female members of a golf club who were excluded from a men's lounge at the Club alleged discrimination on the basis of sex in the provision of a service customarily available to the public. The Court held that the Tribunal lacked jurisdiction. Although the provision of food and drink in a lounge are services commonly available in public, private, commercial and non-commercial settings, the Court held that the services did not create a public relationship between the service provider and the receivers of the service. It was a private club with a formalized selection process, and guests were admitted, not as members of the public, but because members were trusted to grant access to selected people on a limited basis. The Court's decision is under appeal. (*Marine Drive Golf Club* v. *Buntain; Charles et al.*, 2005 BCSC 1434)

The Court upheld a decision that a woman with cerebral palsy and her father were discriminated against on the ground of physical disability and family status when the provincial Ministry of Health refused to provide funding for her to hire her father as her caregiver. The Ministry had a policy excluding hiring of family members. The Court concurred that the Tribunal had jurisdic-

tion to order monetary compensation against the government for discriminatory acts. (*HMTQ* v. *Hutchinson*, 2005 BCSC 1421)

A commercial truck driver who had a visual impairment but a good driving record had his licence cancelled when he failed to meet visual acuity standards after an accident for which he was not liable. The Superintendent of Motor Vehicles did not offer an individualized functional assessment until after he filed a human rights complaint. The licence was returned after the hearing, after an individualized assessment paid for by the Superintendent. The Court applied the common law standard of review rather than section 59 of the *Administrative Tribunals Act*, which came into force after the petition was filed. The Crown's immunity from damage awards arising from legislation, quasi-judicial or policy decisions was held not to apply to compensation for breach of the *Code*. The Superintendent was exercising a business power, not quasi-judicial function. Even if it were a quasi-judicial matter, the license cancellation was not a good faith exercise of power. (*HMTQ* v. *Bolster and B.C. Human Rights Tribunal*, 2005 BCSC 1491)

The Court upheld the Tribunal's dismissal of a complaint of employment discrimination because a *prima facie* case was not proved on a balance of probabilities. The Tribunal made findings of credibility and could choose which evidence to accept or reject based on those findings. It appropriately refused to order the production of irrelevant documents or summons witnesses without sufficient information to show that the witnesses would provide probative evidence. It appropriately decided that an interpreter was needed. It was neither patently unreasonable nor procedurally unfair to order the production of the complainant's tax returns during his cross-examination, or order that he relate his evidence to his particulars of allegations. Allegations of unfairness and bias were rejected. (*Qin* v. *British Columbia (Human Rights Tribunal) et al.*, 2005 BCSC 1662)

The Court interpreted the retaliation provision in the *Code* to apply only after a human rights complaint is filed with the Tribunal and not before. It also determined that section 59 of the *Administrative Tribunals Act* applied where a petition was filed after it came into force. The standard of patent unreasonableness was applied to the Tribunal's discretionary decision to refuse to dismiss a complaint under sections 27(1)(c) and 27(1)(d)(ii) of the *Code*, and a standard of correctness to its decision under section 27(1)(b). The Court found the Tribunal's order to disclose documents incorrect on the facts as stated but noted that they might become relevant later in the proceedings. An appeal of the Court's decision was subsequently settled. (*Cariboo Chevrolet Pontiac Buick GMC Ltd.* v. *Becker*, 2006 BCSC 43)

The Court found that a delay of over five years between the making of a complaint at the former B.C. Human Rights Commission and a final decision by the Tribunal was unfortunate but not inordinate. (*Quackenbush* v. *Purves Ritchie Equipment Ltd.*, 2006 BCSC 246)

APPEALS TO THE B.C. COURT OF APPEAL AND SUPREME COURT OF CANADA

Five of the B.C. Supreme Court decisions on judicial review were appealed to the B.C. Court of Appeal. Tribunal counsel appeared on all but one of the appeals. Leave to appeal to the Supreme Court of Canada was sought twice

and denied.

The Court of Appeal held that section 8 of the *Code*, in regard to the ground of sexual orientation, does not require complainants to identify themselves as homosexuals or that persons harassing them believe that they are homosexuals. The Court upheld the Tribunal's finding that a school board had a duty to provide an educational environment free from discrimination and was liable for the discriminatory conduct of its students. It failed to respond effectively and provide sufficient resources to address the problem, and did not establish a strategy to address harassment and discrimination until after the complainant had graduated. An application for leave to appeal to the Supreme Court of Canada was denied. (*School District No. 44 (North Vancouver)* v. *Jubran*, 2005 BCCA 201)

The Court of Appeal upheld a Tribunal decision under section 12 of the *Code* which found that female police department dispatchers had not proven gender-based wage disparity when compared to male fire department dispatchers because the two groups did not have a common employer. The Court confirmed the Tribunal reasonably concluded the Police Department, not the City of Vancouver, was responsible for compensation practices, even though the City paid the complainants. The Court confirmed the Tribunal's determination of no discrimination in employment under section 13 of the *Code*. (*Reid* v. *Vancouver Police Board*, 2005 BCCA 418)

The Court of Appeal affirmed a B.C. Supreme Court decision that the Tribunal lost jurisdiction to hear a complaint when the person on whose behalf the complaint was brought died before the hearing. An application for leave to appeal to the Supreme Court of Canada was denied. (*British Columbia* v. *Gregoire*, 2005 BCCA 585)

The Court of Appeal determined that a male to female post-operative transsexual woman was discriminated against when a non-profit society providing services to abused women refused to let her do voluntary work as peer counsellor, but this discrimination was permitted by the group rights exemption in section 41 of the *Code*. The group rights exemption applied to a group preferring a subgroup of those whose interests it was created to serve, given good faith and provided that there is a rational connection between the preference and the entity's work or purpose. The Society did not need to establish that its primary purpose was to promote the interests of women who have always been female to benefit from section 41. Whether volunteerism comprises employment under section 13 of the *Code* was not determined. The Court stated the Tribunal could conclude that training or service as a volunteer was a service customarily available to the public under section 8 of the *Code* in this case. (*Vancouver Rape Relief Society* v. *Nixon*, 2005 BCCA 601)

The Court of Appeal found that the Tribunal's discretion to dismiss a complaint under section 27(1) is the same gatekeeping function formerly performed by the BC Human Rights Commission and attracts the highest degree of deference on judicial review. (*Berezoutskaia* v. *British Columbia Human Rights Tribunal*, 2006 BCCA 95)

SPECIAL PROGRAMS

SPECIAL PROGRAMS

Section 42(3) of the *Code* recognizes that treating everyone the same does not necessarily promote true equality and the elimination of discrimination. It provides for special programs that treat disadvantaged individuals or groups differently in order to recognize the reality of their diverse characteristics and their unique needs.

POLICY

The Tribunal has published a policy explaining the special programs approval process and its requirements. A special program is any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups. All approvals are time-limited and are generally between six months to five years in duration. Employment equity programs are usually approved for several years. Periodic reporting may be a condition of approval. A program provider may apply to renew the approval.

A special program, which is approved by the chair of the Tribunal, is deemed not to be discriminatory under the *Code* for the duration of the approval. Special programs may be undertaken without Tribunal approval, but the program provider will not be protected from a human rights complaint without prior approval.

NEW PROGRAMS

The Chair approved three new special programs in the year:

Two school districts were granted approval to restrict hiring for educational positions to First Nations candidates in circumstances where the number of First Nations educators within the districts (9.9% and 2.4%) was disproportionate to the student populations of 53.4% and 12.7%. The districts submitted that First Nations educators would be able to work more effectively with students and their communities and would serve as effective role models for First Nations students.

A residential center, operated by a society to assist recovering addicts, was granted approval to restrict its hiring to females for its Post Acute Withdrawal Support program for women. The Tribunal was satisfied with the information presented that many of the clients who had been traumatized by male abuse or violence achieved higher rates of success in an all female environment.

THE TRIBUNAL AND ITS MEMBERS

THE TRIBUNAL

The Tribunal is an independent quasi-judicial body that exclusively adjudicates human rights complaints under the *Code*. Established in 1997, it continued as a standing adjudicative body pursuant to the March 31, 2003 amendments to the *Code* that instituted a direct access model for human rights complaints and eliminated the BC Human Rights Commission. The Tribunal is now responsible for all preliminary steps in the human rights process, but does not have the investigatory powers of the former Commission.

The Tribunal's office and hearing rooms are located in Vancouver. It manages its staff, budget and physical facilities, and engages its own consultants and specialists. Pursuant to a *Code* power to do so, the Tribunal has developed its own rules to govern practice and procedure. Its registry is managed by a Registrar who is a lawyer.

TRIBUNAL MEMBERS

The Tribunal has nine full-time Members including the Chair, who mediate and decide human rights complaints under the *Code*. The current Chair was appointed in 2000 and has acted as the head of human rights and equity tribunals in Canada for over a decade. Eight Members are qualified lawyers and the ninth has experience as a labour adjudicator, a practice area which includes human rights. The Chair also is responsible for approving special programs under section 42 of the *Code*.

APPOINTMENTS

Members are appointed by the Lieutenant Governor in Council for a renewable five-year term, following a merit-based, multi-step qualification process. Candidates must demonstrate their ability for adjudicative work through decision-writing, situational interviews and peer reviews.

CODE OF CONDUCT

The Chair supervises the Members, designates preliminary applications and hearings to be decided by them, and monitors adherence to performance standards and timeliness. Members are subject to a Code of Conduct in the performance of their role, and complaints about the conduct of Members may be made to the Chair. Section 30 of the *Administrative Tribunals Act* requires Members to faithfully, honestly and impartially perform their duties and to maintain confidentiality.

DECISIONS

In making their decisions, Members are required by law to be independent and impartial. Although the Ministry of the Attorney General provides budget funding, the government may not direct or influence Members in their decision-making, or otherwise interfere with their independence through administrative and budgetary matters that touch on decision-making.

The Tribunal does not make decisions on human rights complaints on a consensus basis. Each Member decides the matter before them independently and in good faith, according to

the law and their own best judment. To ensure flexibility in the application of the *Code*, Members are not bound by each others' decisions, but are bound to follow decisions of the BC courts and the Supreme Court of Canada, and may find guidance in decisions of courts and tribunals in other jurisdictions. Their draft decisions are subject to a voluntary internal review process. To further promote the development of a principled and coherent body of jurisprudence, Members meet regularly to discuss, at a general level, their evolving articulation of the rights protected by the *Code*, and the practices and procedures that support it. Members and legal counsel also meet to discuss existing and emerging legal issues, and to review appeals and judicial reviews of their decisions.

Human Rights Education

Pursuant to sections 5 and 6 of the *Code*, the Attorney General is responsible for educating the public about human rights, and researching and consulting on matters relevant to the *Code*. The Tribunal has no mandate to monitor the state of human rights in the province, however, through open hearings, publication of its decisions, and media reporting, the Tribunal is a source of information to the public about their rights and responsibilities under the *Code*.

Human Rights Presentations

The Tribunal also receives requests for presentations on human rights. In the last year, the Chair, Registrar, legal counsel and a case manager spoke at continuing legal education seminars on human rights, labour and arbitration, and human resource management. Presentations were made to the University of Victoria, the Amnesty International Youth Club, the Office of the Public Trustee and Guardian, the Human Resources Management Association of BC and the administrative law, human rights and alternative dispute resolution sections of the BC Branch of the Canadian Bar Association.

Extra-Provincial Contributions

The Tribunal also made extra-provincial contributions by providing training for members of the Nunavut Human Rights Tribunal, and taking part in mediation and human rights discussions at the Canadian Conference of Administrative Tribunals.

International Contributions

At an international level, the Chair spoke to a Chinese delegation respecting human rights protection in Canada, reviewed direct access human rights models for the Australian Department of Justice, and acted as an advisor to many in the international human rights community on models for human rights protection and adjudication.

THE TRIBUNAL AND ITS MEMBERS

HEATHER M. MACNAUGHTON, CHAIR

Ms. MacNaughton was appointed as chair of the Tribunal on August 1, 2000, and was reappointed for a further five year term beginning July 31, 2005 She holds both a Bachelor of Law (1982) and Master of Law (1998) from Osgoode Hall Law School and a Bachelor of Arts (with distinction) from Brock University (1979). Her Master's work focused on the Litigation Process and Alternative Dispute Resolution.

Prior to her appointment to the Tribunal, Ms. MacNaughton chaired the Ontario Human Rights Board of Inquiry and the Ontario Pay Equity Hearings Tribunal.

Ms. MacNaughton left private practice in 1995 to become a Vice Chair of the Ontario Human Rights Board of Inquiry, the Pay Equity Hearings Tribunal, and the Employment Equity Tribunal. Prior to that, she had been a partner with a national law firm practising in the areas of Labour, Employment, Human Rights, Administrative Law and Civil Litigation.

J.A. (TONIE) BEHARRELL, MEMBER

Ms. Beharrell was appointed as a full-time member of the Tribunal on December 2, 2002. She holds a law degree from the University of British Columbia (1997) and a Bachelor of Arts from Simon Fraser University (1994).

Prior to joining the Tribunal, Ms. Beharrell was an Associate at a national law firm practising in the areas of Labour, Employment, Human Rights, and Administrative Law.

BARBARA HUMPHREYS, MEMBER

Ms. Humphreys was appointed as a full-time member of the Tribunal in 1997. She holds a law degree from the University of Victoria (1984) and a Bachelor of Arts from Sir George Williams University (1969).

Ms. Humphreys joined the B.C. Council of Human Rights in 1990. She was actively involved in the transition from the former B.C. Council of Human Rights to the Human Rights Tribunal.

Prior to joining the B.C. Council of Human Rights, Ms. Humphreys was an Ombudsman Officer for the Office of the Ombudsman.

BARBARA J. JUNKER, MEMBER

Ms. Junker was appointed as a full-time member of the Tribunal on July 28, 2003. She holds a Bachelor of Commerce (1977) from the University of British Columbia.

Prior to joining the Tribunal, Ms. Junker spent nine years as a Vice-Chair at the Labour Relations Board. Prior to that, Ms. Junker worked in the healthcare industry as an employer representative in Labour and Employee Relations.

LINDSAY LYSTER, MEMBER

Ms. Lyster was appointed as a full-time member of the Tribunal on September 30, 2002. She holds a law degree from the University of British Columbia (1991) and a Bachelor of Arts (with distinction) from the University of Victoria (1987).

Prior to joining the Tribunal, Ms. Lyster was Policy Director of the B.C. Civil Liberties Association. Prior to that she was an Adjunct Professor, Faculty of Law, University of British Columbia, teaching in the area of Canadian Constitutional Law and before that she was an Associate at a national law firm practising in the areas of Labour, Human Rights, Constitutional Law, Administrative Law, and Employment Law.

DIANE MACLEAN, MEMBER

Ms. MacLean was appointed as a full-time member of the Tribunal on July 28, 2003. She holds a law degree from the University of British Columbia (1985), a Bachelor of Arts (1972) and a Master of Arts (1980) in Economics from Simon Fraser University.

For several years, Ms. MacLean practised law, taught university courses, and worked as an economic and legal researcher and writer.

Ms. MacLean began working for the Ministry of Labour in 1993, first as a Policy Specialist at the Pension Standards Branch and later as an Officer at the Employment Standards Branch.

Just prior to her appointment to the Tribunal, Ms. MacLean was a Vice-Chair at the Workers' Compensation Appeal Tribunal.

ANA MOHAMMED, MEMBER

Ms. Mohammed was appointed as a full-time member of the Tribunal on March 1, 2001. She holds a law degree from the University of Western Ontario (1990) and an Honours Bachelor of Arts degree from the University of Manitoba (1986).

Prior to joining the Tribunal, Ms. Mohammed was pursuing her Master of Law degree at the University of British Columbia in the areas of Human Rights and Employment Law, and was a Human Rights Consultant in British Columbia. Prior to that, she practised law for five years in Toronto, primarily in the areas of Labour and Employment (with an emphasis on Human Rights) and Criminal Law.

KURT NEUENFELDT, MEMBER

Mr. Neuenfeldt was appointed as a full-time member of the Tribunal on January 6, 2003. He holds a law degree from the University of British Columbia (1978) and a Bachelor of Arts degree from the University of Wisconsin (1972).

Before joining the Tribunal, Mr. Neuenfeldt was a member of the Immigration and Refugee Board of Canada for over nine years. Prior to that, he was in private practice in the Vancouver area. For several years, Mr. Neuenfeldt was with the Legal Services Society of BC. While with the Society, he held a range of positions including Staff Lawyer, General Counsel and Director of Client Services.

ABRAHAM OKAZAKI, MEMBER

Mr. Okazaki was appointed as a full-time member of the Tribunal on July 28, 2003. He holds a law degree from the University of British Columbia (1971) and a Bachelor of Arts degree from the University of Alberta (1964).

Mr. Okazaki practiced law, primarily Corporate and Commercial, but also Civil and Criminal Litigation. Mr. Okazaki has experience as an executive and educator in both the private and public sectors. He has held executive, administrative and teaching positions and directorships in businesses, universities and not-for-profit organizations, both Canadian and international.

Prior to joining the Tribunal, Mr. Okazaki was a Vice-Chair of the Workers' Compensation Appeal Tribunal.

JUDITH PARRACK, MEMBER

Ms. Parrack was appointed as a full-time member of the Tribunal on November 4, 2004. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

Prior to joining the Tribunal, Ms. Parrack was in private practice, practising in the areas of Labour, Human Rights and Administrative Law. Prior to that Ms. Parrack was a full-time member of the B.C. Human Rights Tribunal from 1999 to 2002. Ms. Parrack was also a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999 and was an Associate with a national law firm from 1989 to 1994.

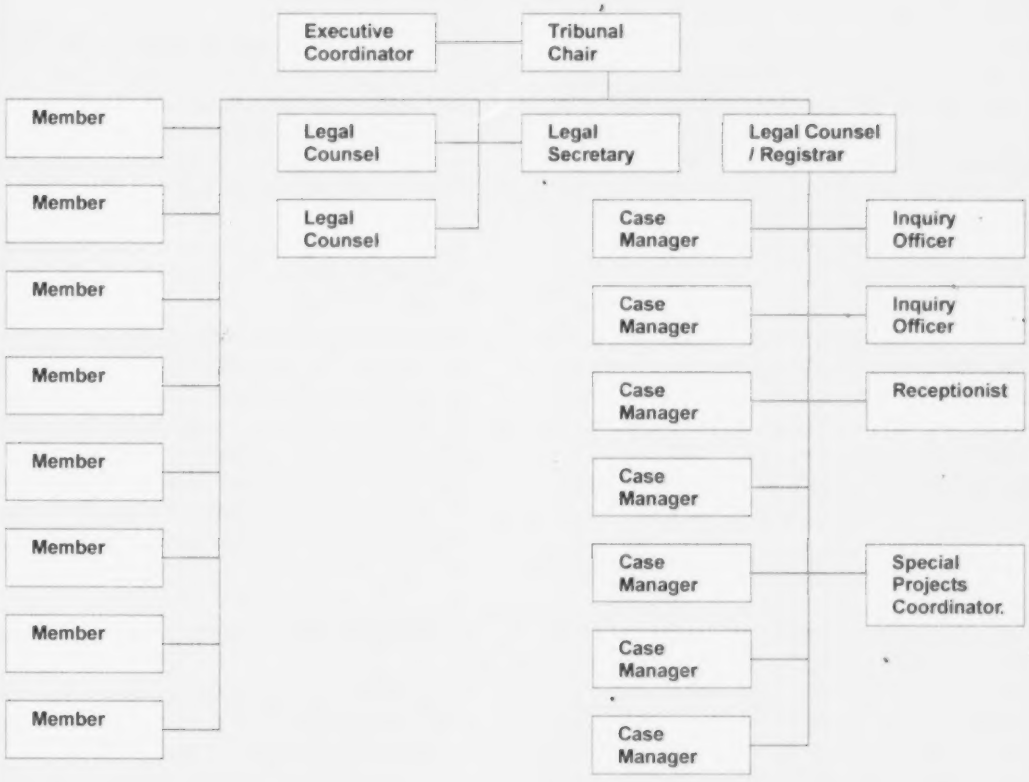
MARLENE TYSHYNSKI, MEMBER

Ms. Tyshynski was appointed as a full-time member of the Tribunal on December 1, 2005. She holds a law degree from the University of Victoria (1988). She also holds a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

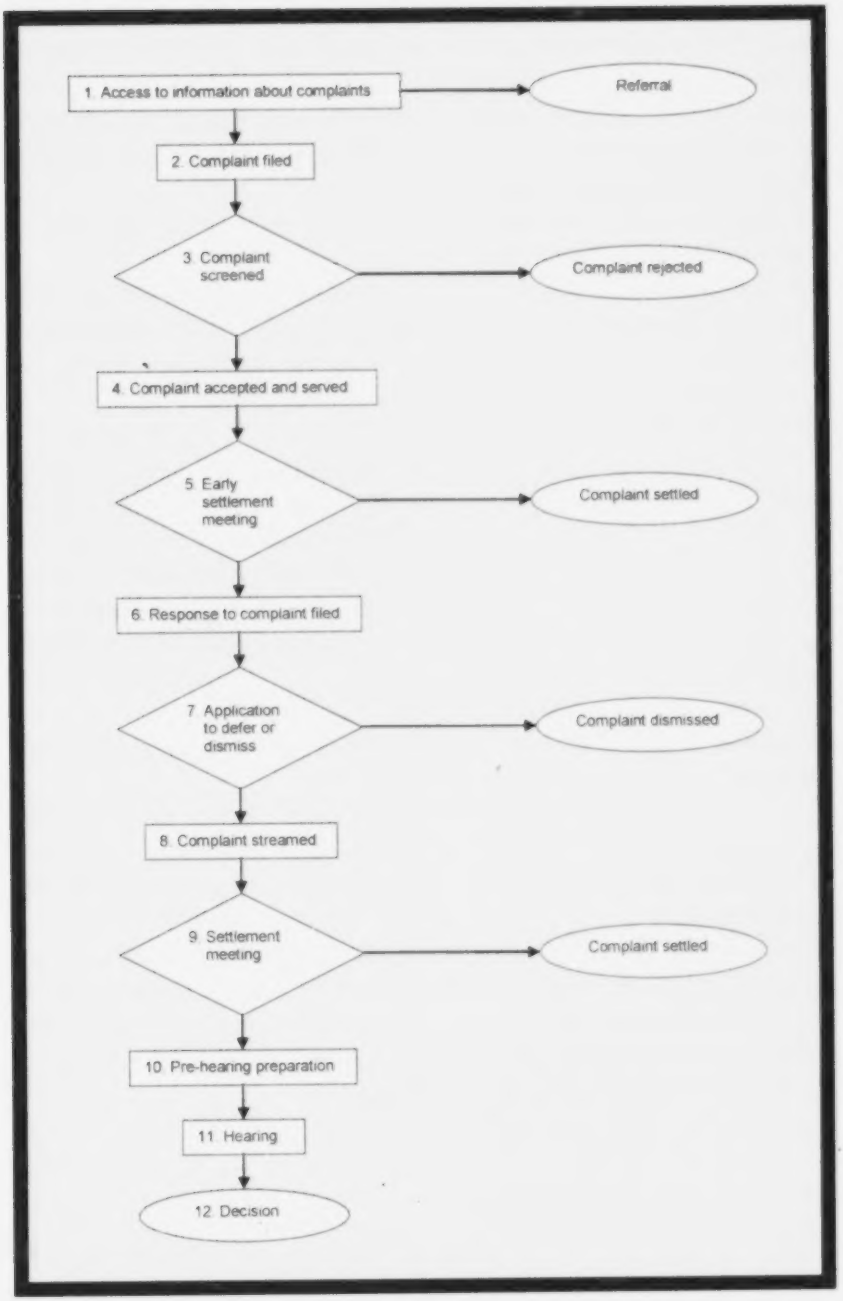
Prior to her appointment Ms. Tyshynski served as legal counsel to the Tribunal for three years. She formerly worked as a staff lawyer for The Legal Services Society. Prior to this she was in private practice for several years specializing, among other areas, in administrative law. At the outset of her career Ms. Tyshynski was an associated first with the firm of Vickers and Palmer and then with the firm of Horne Coupar, both Victoria firms.

ORGANIZATION CHART

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL



COMPLAINT FLOW CHART



Summary of Steps in the Complaint Procedure

1. Access to information about complaints

Two Tribunal inquiry officers give callers basic information about human rights protection under the *Code*, the complaint process and other organizations providing assistance in human rights matters. If the call is not about a human rights matter, the inquiry officers may refer the caller to another agency. Complaint forms, guides and information sheets are available from the Tribunal, on its Web site, at government agents' offices, the Human Rights Clinic and other organizations.

2. Complaint filed

The first step in the complaint process is filing a complaint form.

3. Complaint screened

The complaint is assigned to a case manager who reviews it to see it is complete, appears to be within the jurisdiction of the Tribunal, and is within the six-month time limit.

If the complaint form is not complete, the case manager explains why and gives the complainant a limited time to complete it.

If it is clear that the complaint does not involve a provincial matter or a human rights matter covered by the *Code*, the case manager will recommend to the Chair that the complaint be rejected.

If it appears that the complaint was filed after the six-month time limit, the case manager asks the parties whether it is in the public interest to accept the complaint and whether anyone would be substantially prejudiced by the delay in filing. A Tribunal member decides whether to accept the complaint.

4. Complaint accepted and served

After the complaint is screened, the Tribunal notifies the parties that it has been accepted.

5. Early settlement meeting

The parties may meet with a Tribunal mediator who will help them resolve the complaint before any further steps are taken. Many complaints are settled at this stage.

6. Response to complaint filed

If the parties do not settle or do not want an early settlement meeting, the respondent files a response to the complaint form and may also file an application to defer or dismiss the complaint.

7. Application to defer or dismiss

If a respondent applies to have the complaint deferred or dismissed, the Tribunal gets submissions from the parties and a Tribunal member makes a decision. Complaints may be deferred if there is another proceeding capable of appropriately dealing with the substance of the complaint. Complaints may be dismissed for the reasons provided in section 27(1) of the *Code*.

SUMMARY OF STEPS IN THE COMPLAINT PROCEDURE

8. COMPLAINT STREAMED

Once a response to the complaint is filed and screened, the Tribunal decides whether it will follow the standard stream or be case-managed by a Tribunal member because of its complexity or other special characteristics.

9. SETTLEMENT MEETING

After the complaint is streamed, the parties have another opportunity to take part in a settlement meeting.

10. PRE-HEARING PREPARATION

If the complaint does not settle, the parties must prepare for the hearing, and exchange relevant documents, witness lists, and positions on remedy. The case manager will telephone them several weeks before the hearing to check that they are ready.

11. HEARING

Hearings are held before a Tribunal member or a panel of three members in exceptional cases. The parties attend in person and the hearing is open to the public. Evidence is given through witnesses, documents and other items. Each party has an opportunity to challenge the other party's evidence and to make arguments supporting their position.

12. DECISION

Based on the evidence, the arguments and the relevant law, the Tribunal member or panel decides whether the complainant has proven that discrimination occurred and, if so, whether the respondent has a defence to the discrimination. If the complaint is not justified, it is dismissed. If the complaint is justified, orders are made to remedy the discrimination.

PUBLICATIONS AND STAFF

The following Guides, Information Sheets and Policies are available on our web site or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

GUIDES

1 The BC Human Rights Code and Tribunal
2 Making a Complaint and guide to completing a Complaint Form
3 Responding to a Complaint and guide to completing a Response to Complaint Form
4 The Settlement Meeting
5 Getting Ready for a Hearing

INFORMATION SHEETS

1 Tribunal's Rules of Practice and Procedure
2 How to Name a Respondent
3 What is a Representative Complaint?
4 Completing Time Limit Forms - Complainant
5 Completing Time Limit Forms - Respondent
6 Tribunal Complaint Streams
7 Standard Stream Process - Complainants
8 Standard Stream Process - Respondents
9 How to Ask for an Expedited Hearing
10 How to Deliver Communications to Other Participants
11 What is Disclosure?
12 How to Make an Application
13 How to Add a Respondent
14 How to Add a Complainant
15 How to Make an Intervenor Application
16 Applying to Dismiss a Complaint Under Section 27
17 How to Request an Extension of Time
18 How to Apply for an Adjournment
19 How to Require a Witness to Attend a Hearing
20 Complainant's Duty to Communicate with the Tribunal
21 How to Find Human Rights Decisions
22 Remedies at the Human Rights Tribunal
23 How to Seek Judicial Review
24 How to Obtain Documents From a Person or Organization Who is Not a Party to the Complaint

POLICIES

- Complainant's Duty to Communicate with the Tribunal
- Settlement Meeting
- Special Programs

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